

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE MAY 13, 2013

AMENDED IN SENATE APRIL 25, 2013

AMENDED IN SENATE APRIL 9, 2013

SENATE BILL

No. 218

Introduced by Senator Yee

February 11, 2013

An act to amend Sections 4935, 4955, 4955.1, 4955.2, 4956, 4960.2, 4961, 4965, 4966, 4967, and 4969 of, to add Section 4964.5 to, and to add Article 3 (commencing with Section 4950) to Chapter 12 of Division 2 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 218, as amended, Yee. Healing arts.

Existing law, the Acupuncture Licensure Act, establishes the Acupuncture Board and makes it responsible for enforcing and administering the act, including licensing persons who meet specified licensure requirements. Under the act, licensees are titled "acupuncturists," and are authorized to perform designated activities pursuant to their license. The unlawful practice of acupuncture, as specified, is a crime.

This bill would, commencing May 1, 2014, require the board to issue a certificate to practice as a traditional Chinese medicine traumatologist to an applicant who meets certain education, training, and clinical experience requirements and pays a *reasonable fee of an unspecified amount, as determined by the board*. This bill would require the board to establish the California Traditional Chinese Medicine Traumatology Committee to provide advice and carry out specified duties, including

investigation and evaluation of whether an applicant meets those education, training, and clinical experience requirements.

The bill would set forth procedures for the renewal of an unexpired or expired certificate to perform traditional Chinese medicine traumatology and would ~~establish fees in unspecified amounts~~ *require the board to establish reasonable fees* in that regard.

This bill would make it an unfair business practice to use the title of “certified traditional Chinese medicine traumatologist” without meeting these certification requirements and would authorize the board to suspend or revoke a certificate for unprofessional conduct, certain fraudulent acts, or specified crimes committed by the certificate holder. The bill would also make it a crime to use the title of “certified traditional Chinese medicine traumatologist” without meeting these certification requirements and to fraudulently buy or sell a certificate for traditional Chinese medicine traumatology, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4935 of the Business and Professions
2 Code is amended to read:
3 4935. (a) (1) It is a misdemeanor, punishable by a fine of not
4 less than one hundred dollars (\$100) and not more than two
5 thousand five hundred dollars (\$2,500), or by imprisonment in a
6 county jail not exceeding one year, or by both that fine and
7 imprisonment, for any person who does not hold a current and
8 valid license to practice acupuncture under this chapter, to hold
9 himself or herself out as practicing or engaging in the practice of
10 acupuncture, or to hold himself or herself out as a certified
11 traditional Chinese medicine traumatologist or use the title of
12 “certified traditional Chinese medicine traumatologist” without
13 meeting the requirements of this chapter.

(2) It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) and not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person to fraudulently buy, sell, or obtain a license to practice acupuncture or a certificate for traditional Chinese medicine traumatology, or to violate the provisions of this chapter.

(b) Notwithstanding any other provision of law, any person, other than a physician and surgeon, a dentist, or a podiatrist, who is not licensed under this article but is licensed under Division 2 (commencing with Section 500), who practices acupuncture involving the application of a needle to the human body, performs any acupuncture technique or method involving the application of a needle to the human body, or directs, manages, or supervises another person in performing acupuncture involving the application of a needle to the human body is guilty of a misdemeanor.

(c) A person holds himself or herself out as engaging in the practice of acupuncture by the use of any title or description of services incorporating the words “acupuncture,” “acupuncturist,” “certified acupuncturist,” “licensed acupuncturist,” “Asian medicine,” “oriental medicine,” “traditional Chinese medicine,” or any combination of those words, phrases, or abbreviations of those words or phrases, by representing that he or she is trained, experienced, or an expert in the field of acupuncture, Asian medicine, or Chinese medicine, or by representing that he or she is trained, experienced, or an expert in the field of traditional Chinese medicine traumatology.

(d) Subdivision (a) shall not prohibit a person from administering acupuncture treatment as part of his or her educational training if he or she:

(1) Is engaged in a course or tutorial program in acupuncture, as provided in this chapter; or

(2) Is a graduate of a school of acupuncture approved by the board and participating in a postgraduate review course that does not exceed one year in duration at a school approved by the board.

SEC. 2. Article 3 (commencing with Section 4950) is added to Chapter 12 of Division 2 of the Business and Professions Code, to read:

Article 3. California Traditional Chinese Medicine
Traumatologist

4950. As used in this article:

(a) “California certified traditional Chinese medicine traumatologist” means a person who has been certified by the California Traditional Chinese Medicine Traumatology Committee to perform traditional Chinese medicine traumatology.

(b) “Committee” means, notwithstanding Section 4925, the California Traditional Chinese Medicine Traumatology Committee.

(c) “Traditional Chinese medicine traumatology” includes a range of treatments to address both acute and chronic musculoskeletal conditions through stimulation of acupressure points. Techniques include, but are not limited to, brushing, kneading, rolling, pressing, rubbing, pushing, holding, and lifting the areas between each of the joints to open the body’s defensive chi and stimulate the energy movement in the meridians.

4950.1. (a) (1) On or before March 1, 2014, the board shall establish the California Traditional Chinese Medicine Traumatology Committee within the board. The committee shall consist of the following five members appointed by the board:

(A) One representative from the California Medical Association.

(B) One representative from the California Orthopaedic Association.

(C) One representative from the Medical Board of California.

(D) Two representatives from a traditional Chinese medicine traumatology clinical setting. These representatives shall be selected by professional societies, associations, or other entities, whose memberships are comprised solely of practitioners of traditional Chinese medicine traumatology. To qualify as a professional society or association, an entity shall have a dues paying membership in the state of at least 30 individuals for the last three years and shall have bylaws that require its members to comply with a code of ethics.

(2) Members of the committee shall serve for a term of four years.

(b) The board, in implementing this article, shall give specific consideration to the recommendations of the committee.

(c) (1) Pursuant to Section 4950.2, the committee shall meet and confer to determine an applicant’s qualifications, as prescribed

1 in Section 4950.2, including the level of experience and training
2 needed to qualify for California traditional Chinese medicine
3 traumatology certification.

4 (2) The committee shall advise the board on any other issues
5 pursuant to this article.

6 4950.2. (a) The committee shall investigate all of the
7 documentation provided by the applicant and verify its authenticity
8 to evaluate whether an applicant meets the certification standards,
9 including the level of education, experience, and training to
10 sufficiently qualify for the traumatology certification, and shall
11 report its findings and determination to the board.

12 (b) Commencing May 1, 2014, the board shall issue a certificate
13 for certified traditional Chinese medicine traumatology to any
14 person who makes an application to the board and meets all of the
15 following requirements:

16 (1) Is at least 18 years of age.

17 (2) Is not subject to denial pursuant to Division 1.5 (commencing
18 with Section 475).

19 (3) Furnishes satisfactory evidence of education, training, and
20 clinical experience that meets one of the following standards:

21 (A) Passed an examination and received a certificate *from an*
22 *institution of higher education* in traditional Chinese medicine
23 traumatology for completing a curriculum in the subject. The
24 curriculum for all applicants shall provide for adequate instruction
25 in each of the following subjects:

26 (i) Human anatomy and physiology.

27 (ii) Pathology.

28 (iii) Western diagnosis on traumatological injury.

29 (iv) Clinical management and medical ethics.

30 (v) Basic theory of traditional Chinese medicine.

31 (vi) Comparison of traditional Chinese medicine and western
32 medicine.

33 (vii) Meridian and acupoints.

34 (viii) Basic traditional Chinese medicine diagnosis.

35 (ix) Basic theory of traditional Chinese medicine traumatology.

36 (x) Traditional Chinese medicine diagnosis on traumatology.

37 (xi) Hands on Skills of Traditional Chinese Medicine
38 Traumatology I.

39 (xii) Hands on Skills of Traditional Chinese Medicine
40 Traumatology II.

1 (xiii) Chinese herbs and formulas for traumatology.

2 (xiv) Traditional Chinese medicine traumatology case study.

3 (xv) One thousand hours in a clinical internship on traditional
4 Chinese medicine traumatology.

5 (B) In the case of an applicant who completed an apprenticeship
6 as a traditional Chinese medicine traumatologist for 10 years prior
7 to January 1, 2014, furnishes satisfactory evidence of completing
8 education, training, and at least 10 years clinical experience in
9 traditional Chinese medicine traumatology.

10 (C) In the case of an applicant who has completed education
11 and training outside of the United States or Canada, furnishes
12 satisfactory evidence of completing education, training, and at
13 least 10 years clinical experience in traditional Chinese medicine
14 traumatology.

15 4950.3. (a) (1) An applicant for traditional Chinese medicine
16 traumatology certification shall file an application for that
17 certificate with the board.

18 ~~(b)~~

19 (2) When submitting his or her application to the board, the
20 applicant shall pay an application fee in a reasonable amount
21 determined by the board, ~~not to exceed _____ dollars (\$_____)~~, for
22 ~~the regulatory cost to the board of processing the application~~
23 *established in accordance with subdivision (d).*

24 ~~(c)~~

25 ~~(b) (1)~~ A certified traditional Chinese medicine traumatologist
26 shall renew his or her certificate every five years.

27 ~~(d)~~

28 (2) An expired certificate may be renewed at any time within
29 three years after its expiration. The holder of the certificate shall
30 pay all accrued and unpaid renewal fees, plus a delinquency fee,
31 according to the following:

32 ~~(1) An annual renewal fee of _____ dollars (\$_____).~~

33 ~~(2) A delinquency fee of _____ dollars (\$_____).~~

34 ~~(3) A fee for a duplicate or replacement engraved wall certificate~~
35 ~~of _____ dollars (\$_____).~~

36 ~~(4) A fee for a duplicate or replacement renewal receipt or~~
37 ~~pocket certificate of _____ dollars (\$_____).~~ *established in*
38 *accordance with to subdivision (d).*

1 (c) (1) *The committee shall issue a duplicate or replacement*
2 *engraved wall certificate or a duplicate or replacement renewal*
3 *receipt or pocket certificate, upon request.*

4 (2) *The board shall charge a reasonable fee, established in*
5 *accordance with subdivision (d), to process a request for the*
6 *reissuance of a certificate under this subdivision.*

7 (d) *The board shall adopt a schedule of fees, pursuant to this*
8 *section, in amounts that are sufficient to recover all reasonable*
9 *costs incurred by the board, including any startup costs, under*
10 *this article.*

11 (e) Moneys received under this section shall be deposited in the
12 Acupuncture Fund for the purposes of carrying out this article.

13 4950.4. It is an unfair business practice for any person to hold
14 himself or herself out as a certified traditional Chinese medicine
15 traumatologist or to use the title of “certified traditional Chinese
16 medicine traumatologist” without meeting the requirements of this
17 article.

18 4950.5. (a) A California certified traditional Chinese medicine
19 traumatologist shall not practice medicine, as provided in Section
20 2052.

21 (b) A California certified traditional Chinese medicine
22 traumatologist shall not practice within the scope of activities
23 regulated by the State Board of Chiropractic Examiners.

24 SEC. 3. Section 4955 of the Business and Professions Code is
25 amended to read:

26 4955. The board may deny, suspend, or revoke, or impose
27 probationary conditions upon, the license of any acupuncturist or
28 the certificate of any traditional Chinese medicine traumatologist
29 if he or she is guilty of unprofessional conduct. As used in this
30 section, “licensee” includes a certified traditional Chinese medicine
31 traumatologist.

32 Unprofessional conduct shall include, but not be limited to, the
33 following:

34 (a) Using or possessing any controlled substance as defined in
35 Division 10 (commencing with Section 11000) of the Health and
36 Safety Code, or dangerous drug or alcoholic beverage to an extent
37 or in a manner dangerous to himself or herself, or to any other
38 person, or to the public, and to an extent that the use impairs his
39 or her ability to engage in the practice of acupuncture or
40 traumatology with safety to the public.

1 (b) Conviction of a crime substantially related to the
2 qualifications, functions, or duties of an acupuncturist or certified
3 traditional Chinese medicine traumatologist, the record of
4 conviction being conclusive evidence thereof.

5 (c) False or misleading advertising.

6 (d) Aiding or abetting in, or violating or conspiring in, directly
7 or indirectly, the violation of the terms of this chapter or any
8 regulation adopted by the board pursuant to this chapter.

9 (e) Except for good cause, the knowing failure to protect patients
10 by failing to follow infection control guidelines of the board,
11 thereby risking transmission of bloodborne infectious diseases
12 from licensee to patient, from patient to patient, and from patient
13 to licensee. In administering this subdivision, the board shall
14 consider referencing the standards, regulations, and guidelines of
15 the State Department of Public Health developed pursuant to
16 Section 1250.11 of the Health and Safety Code and the standards,
17 regulations, and guidelines pursuant to the California Occupational
18 Safety and Health Act of 1973 (Part 1 (commencing with Section
19 6300) of Division 5 of the Labor Code) for preventing the
20 transmission of HIV, hepatitis B, and other bloodborne pathogens
21 in health care settings. As necessary, the board shall consult with
22 the Medical Board of California, the California Board of Podiatric
23 Medicine, the Dental Board of California, the Board of Registered
24 Nursing, and the Board of Vocational Nursing and Psychiatric
25 Technicians of the State of California, to encourage appropriate
26 consistency in the implementation of this subdivision.

27 The board shall seek to ensure that licensees are informed of the
28 responsibility of licensees and others to follow infection control
29 guidelines, and of the most recent scientifically recognized
30 safeguards for minimizing the risk of transmission of bloodborne
31 infectious diseases.

32 (f) The use of threats or harassment against any patient or
33 licensee for providing evidence in a disciplinary action, other legal
34 action, or in an investigation contemplating a disciplinary action
35 or other legal action.

36 (g) Discharging an employee primarily for attempting to comply
37 with the terms of this chapter.

38 (h) Disciplinary action taken by any public agency for any act
39 substantially related to the qualifications, functions, or duties of

1 an acupuncturist, certified traditional Chinese medicine
2 traumatologist, or any professional health care licensee.

3 (i) Any action or conduct that would have warranted the denial
4 of the acupuncture license or the traumatology certificate.

5 (j) The violation of any law or local ordinance on a licensee's
6 business premises by a licensee's employee or a person who is
7 working under the licensee's professional license or business
8 permit, that is substantially related to the qualifications, functions,
9 or duties of the licensee. These violations shall subject the licensee
10 who employed the individuals, or under whose acupuncturist
11 license or traumatology certificate the employee is working, to
12 disciplinary action.

13 (k) The abandonment of a patient by the licensee without written
14 notice to the patient that treatment is to be discontinued and before
15 the patient has had a reasonable opportunity to secure the services
16 of another practitioner.

17 (l) The failure to notify the board of the use of any false,
18 assumed, or fictitious name other than the name under which he
19 or she is licensed as an individual to practice acupuncture or as an
20 individual certified in traditional Chinese medicine traumatology.

21 SEC. 4. Section 4955.1 of the Business and Professions Code
22 is amended to read:

23 4955.1. The board may deny, suspend, revoke, or impose
24 probationary conditions upon the license of any acupuncturist or
25 certificate of any certified traditional Chinese medicine
26 traumatologist if he or she is guilty of committing a fraudulent act,
27 including, but not limited to, the following:

28 (a) Securing a license by fraud or deceit.

29 (b) Committing a fraudulent or dishonest act as an acupuncturist
30 or certified traditional Chinese medicine traumatologist.

31 (c) Committing any act involving dishonesty or corruption with
32 respect to the qualifications, functions, or duties of an acupuncturist
33 or certified traditional Chinese medicine traumatologist.

34 (d) Altering or modifying the medical record of any person,
35 with fraudulent intent, or creating any false medical record.

36 (e) Failing to maintain adequate and accurate records relating
37 to the provision of services to his or her patients.

38 SEC. 5. Section 4955.2 of the Business and Professions Code
39 is amended to read:

1 4955.2. The board may deny, suspend, revoke, or impose
2 probationary conditions upon the license of any acupuncturist or
3 certified traditional Chinese medicine traumatologist if he or she
4 is guilty of committing any one of the following:

5 (a) Gross negligence.

6 (b) Repeated negligent acts.

7 (c) Incompetence.

8 SEC. 6. Section 4956 of the Business and Professions Code is
9 amended to read:

10 4956. A plea or verdict of guilty or a conviction following a
11 plea of nolo contendere made to a charge that is substantially
12 related to the qualifications, functions, or duties of an acupuncturist
13 or certified traditional Chinese medicine traumatologist is deemed
14 to be a conviction within the meaning of this chapter.

15 The board may order a license or certificate suspended or
16 revoked, or may deny a license or certificate, or may impose
17 probationary conditions upon a license or certificate, when the
18 time for appeal has elapsed, or the judgment of conviction has
19 been affirmed on appeal, or when an order granting probation is
20 made suspending the imposition of sentence irrespective of a
21 subsequent order under Section 1203.4 of the Penal Code allowing
22 the person to withdraw his or her pleas of guilty and to enter a plea
23 of not guilty, or setting aside the verdict of guilty, or dismissing
24 the accusation, complaint, information, or indictment.

25 SEC. 7. Section 4960.2 of the Business and Professions Code
26 is amended to read:

27 4960.2. The board in all cases of revocation shall certify the
28 fact of the revocation, under the seal of the board, to the business
29 licensing entity of the cities or counties in which the license of the
30 acupuncturist or the certificate of the traditional Chinese medicine
31 traumatologist has been revoked. The record of the revocation
32 made by the county or city clerk shall be sufficient evidence of
33 the revocation, and of the regularity of all proceedings of the board
34 in the matter of the revocation.

35 SEC. 8. Section 4961 of the Business and Professions Code is
36 amended to read:

37 4961. (a) Every person who is now or hereafter licensed to
38 practice acupuncture or certified to practice traditional Chinese
39 medicine traumatology in this state shall register, on forms
40 prescribed by the board, his or her place of practice, or, if he or

1 she has more than one place of practice, all of the places of practice.
2 If the licensee or certificate holder has no place of practice, he or
3 she shall notify the board of that fact. A person licensed or certified
4 by the board shall register within 30 days after the date of his or
5 her licensure or certification.

6 (b) A licensee or certificate holder shall post his or her license
7 or certificate in a conspicuous location in his or her place of
8 practice at all times. If an acupuncturist or certified traditional
9 Chinese medicine traumatologist has more than one place of
10 practice, he or she shall obtain from the board a duplicate license
11 or certificate for each additional location and post the duplicate
12 license or certificate at each location.

13 (c) Any licensee or certificate holder that changes the location
14 of his or her place of practice shall register each change within 30
15 days of making that change. If a licensee or certificate holder fails
16 to notify the board of any change in the address of a place of
17 practice within the time prescribed by this section, the board may
18 deny renewal of licensure or certification. An applicant for renewal
19 of licensure or certification shall specify in his or her application
20 whether or not there has been a change in the location of his or
21 her place of practice and, if so, the date of that change. The board
22 may accept that statement as evidence of the change of address.

23 SEC. 9. Section 4964.5 is added to the Business and Professions
24 Code, immediately following Section 4964, to read:

25 4964.5. The provisions of this article apply to both licensed
26 acupuncturists and certified traditional Chinese medicine
27 traumatologists.

28 SEC. 10. Section 4965 of the Business and Professions Code
29 is amended to read:

30 4965. (a) (1) A license to practice acupuncture issued pursuant
31 to this chapter shall expire on the last day of the birth month of
32 the licensee during the second year of a two-year term, if not
33 renewed.

34 (2) The board shall establish and administer a birth date renewal
35 program for purposes of this subdivision.

36 (3) To renew an unexpired license, the holder shall apply for
37 renewal on a form provided by the board and pay the renewal fee
38 fixed by the board.

39 (b) A certificate for traditional Chinese medicine traumatology
40 issued pursuant to this chapter shall expire five years after the date

1 of issuance, if not renewed. To renew an unexpired certificate, the
2 holder shall apply for renewal on a form provided by the board
3 and pay the renewal fee set forth in Section 4950.3.

4 SEC. 11. Section 4966 of the Business and Professions Code
5 is amended to read:

6 4966. (a) Except as provided in Section 4969, a license to
7 practice acupuncture that has expired may be renewed at any time
8 within three years after its expiration by filing an application for
9 renewal on a form provided by the board, paying all accrued and
10 unpaid renewal fees, and providing proof of completing continuing
11 education requirements. If the license is not renewed prior to its
12 expiration, the acupuncturist, as a condition precedent to renewal,
13 shall also pay the prescribed delinquency fee.

14 (b) Except as provided in Section 4969, a certificate for
15 traditional Chinese medicine traumatology that has expired may
16 be renewed at any time within three years after its expiration by
17 filing an application for renewal on a form provided by the board,
18 and paying all accrued and unpaid renewal fees. If the certificate
19 is not renewed prior to its expiration, the traditional Chinese
20 medicine traumatologist, as a condition precedent to renewal, shall
21 also pay a delinquency fee, set in accordance with Section 163.5.

22 (c) Renewal under this section shall be effective on the date on
23 which the application is filed, on the date on which the renewal
24 fee is paid, or on the date the delinquency fee is paid, whichever
25 occurs last. If so renewed, the license or certificate shall continue
26 in effect through the expiration date provided in Section 4965,
27 after the effective date of the renewal, when it shall expire and
28 become invalid if it is not again renewed.

29 SEC. 12. Section 4967 of the Business and Professions Code
30 is amended to read:

31 4967. A person who fails to renew his or her license or
32 certificate within three years after its expiration may not renew it,
33 and it may not be restored, reissued, or reinstated thereafter, but
34 that person may apply for and obtain a new license or certificate
35 if he or she meets all of the following requirements:

36 (a) Has not committed any acts or crimes constituting grounds
37 for denial of licensure or certification under Division 1.5
38 (commencing with Section 475).

39 (b) If an acupuncturist takes and passes the examination, if any,
40 which would be required of him or her if an initial application for

1 licensure was being made, or, if an acupuncturist or certified
2 traditional Chinese medicine traumatologist otherwise establishes
3 to the satisfaction of the board that, with due regard for the public
4 interest, he or she is qualified to practice as an acupuncturist or
5 certified traditional Chinese medicine traumatologist.

6 (c) Pays all of the fees that would be required if an initial
7 application for licensure or certification was being made.

8 (d) The board may provide for the waiver or refund of all or
9 any part of an examination fee in those cases in which a license
10 to practice acupuncture is issued without an examination pursuant
11 to this section.

12 SEC. 13. Section 4969 of the Business and Professions Code
13 is amended to read:

14 4969. (a) A suspended license or certificate is subject to
15 expiration and shall be renewed as provided in this article, but the
16 renewal does not entitle the acupuncturist or certified traditional
17 Chinese medicine traumatologist, while the license or certificate
18 remains suspended, and until it is reinstated, to engage in the
19 practice of acupuncture or traditional Chinese medicine
20 traumatology, or in any other activity or conduct in violation of
21 the order or judgment by which the license or certificate was
22 suspended.

23 (b) A revoked license or certificate is subject to expiration as
24 provided in this article, but it may not be renewed. If it is reinstated
25 after its expiration, the former licensee or certificate holder, as a
26 condition to reinstatement, shall pay a reinstatement fee in an
27 amount equal to the renewal fee in effect on the last regular renewal
28 date before the date on which the license or certificate was
29 reinstated, plus the delinquency fee, if any, accrued at the time of
30 its expiration.

31 SEC. 14. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O